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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,829	11/24/2003	Michael Barth Venturino	KCX-669 (19587)	4748
22827 7590 03/14/2007 DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			EXAMINER HILL, LAURA C	
			ART UNIT 3761	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/14/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/721,829

Applicant(s)

VENTURINO ET AL.

Examiner

Laura C. Hill

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3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2006 and 27 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 12-33 is/are pending in the application.
- 4a) Of the above claim(s) 17-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 12-16, 21-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

Please note that the finality of the Office action mailed 8 February 2006 was withdrawn pursuant to the Election/Restriction requirement mailed 26 September 2006 but was not noted therein.

Applicant's arguments filed 3 May 2006 have been fully considered but they are not persuasive.

1. In response to Applicant's statement that Fujioka fails to disclose any opposing lateral flaps that can be folded onto a middle portion (see Remarks page 7), Examiner maintains that Fujioka discloses flaps 18a, 20a that can be folded onto middle portion defined between lines L,L or crotch portion 19 (see figure 1A again).
2. In response to Applicant's statement that Fujioka fails to disclose the lateral flaps are approximately one half of the middle portion 14 (see Remarks page 7), In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., flaps are approximately one half of the width of the middle portion) are not recited in the rejected claim(s). Rather the claim limitations require that "each of the flaps having a width adjacent to the middle portion that is **from about** 25% to 100% of the width of the middle portion" (see claim 1, lines 16-17). Note that other dependent claims also recite the width upper limit to be 100% (claim 4, lines 2-3 and claim 5, lines 2-3). Although the claims are interpreted in light of the specification, limitations from the specification are

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not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

3. In response to Applicant's statement that Fujioka fails to recognize the advantages as defined by Applicant (see Remarks page 8), the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

#### ***Election/Restrictions***

4. Claims 17-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 27 December 2006. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01. It is noted that claim 15 is included in species I previously set forth and is hereby examined on the merits in agreement with Applicant's remarks submitted 27 December 2006.

Applicant's election with traverse of the species requirement mailed 26 September 2006 in the reply filed on 27 December 2006 is acknowledged. The traversal is on the ground(s) that all of the pending claims require the flaps to be in a folded configuration. This is not found persuasive because claims 17-20 specifically recite that "the absorbent structure has a non-uniform basis weight when in an *unfolded*

state" (claims 17-20, line 2). Since Applicant has elected species I, the remaining species elections (II, III, and IV) are herein rendered moot.

The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 3-6, 15, 21, and 26-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Fujioka et al. (US 6,050,984; herein 'Fujioka'). Regarding claims 1, 3-7, 9, 15, 21, 26-31 Fujioka discloses an absorbent diaper 11 having an absorption core 14 interposed between back sheet/outer cover 12 and top sheet/liner 13 (column 3, lines 1-3), the hour-glass shaped absorption chassis structure including a middle/crotch portion 19 being narrower than a front portion 18 and rear portion 20 (figure 1A), said front portion 18 extends from a front edge to the middle portion and defining an outermost lateral periphery (column 3, lines 15-19 and figure 1A), the absorption core 14 comprising a pair of opposing lateral flaps 18a, 20a folded onto a middle portion [Note the middle portion can be either crotch region 19 or the lateral distance between two longitudinal fold lines L and L in figure 1A), front portion and rear portion of absorption core (column 4, lines 25-30 and figure 1B), the middle portion 19 when lateral flaps are folded having a uniform *thickness* two or three times the thickness of portion 14a where there are no flaps (column 3, lines 29-32 and lines 38-41, column 4, lines 59- 65, and

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figures 1 and 2A-2C), and thus inherently having a folded portion basis weight two of three times the unfolded portion basis weight [Note that Fujioka inherently discloses a basis weight since thickness is increased by increasing the basis weight as taught by Ortega, US 2001/0055682, paragraph 0003 and furthermore since thickness and basis are variables directly related to each other]; each of the flaps 18a, 20a having a width adjacent to the middle portion 19 that is from 25-100% of the middle portion 19 width (figure 1A).

Regarding claims 32-33 Fujioka discloses after lateral flaps 18a, 20a have been folded the middle portion comprises two or three layers of material (figures 2B and 2C).

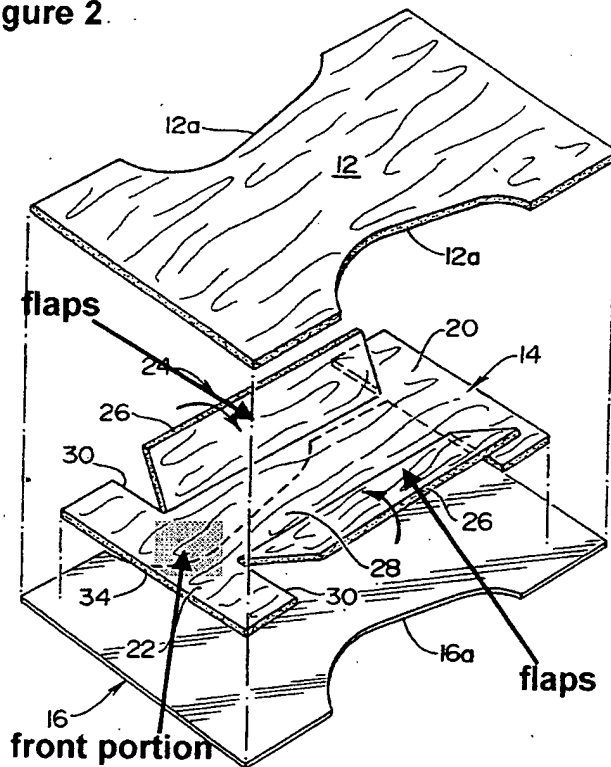
### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 12-14, 16, and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fujioka et al. (US 6,050,984; herein 'Fujioka') in view of Mesek (US 4,960,477; herein 'Mesek'). Regarding claim 12 Fujioka *does not expressly disclose* first and second slits. **Mesek** discloses absorbent disposable diaper 10 with a outer cover layer 16, facing layer/liner 12 and absorbent batt 14 sandwiched between these two layers; absorbent structure having a front, rear and middle portion with the middle portion being narrower than the front portion; a pair of opposing lateral side flap portions 26 extending substantially the entire length of the absorbent and connected to medial portion 28; side flap portions 26 defined by lines of cutting 30/first and second slits and side flap portions 26 being folded onto the front, middle and rear portions of absorbent

diaper 10; each of the flaps in an unfolded state extending beyond the width of the front portion (column 7, lines 4-12, 30-32, and 42-46 and figure 2), said slits form flaps that forms a section with increased absorbent capacity in the middle crotch region (column 10, lines 64-68). One would be motivated to modify the flaps of Fujioka with the slits of Mesek to provide an article with increased absorbent capacity in the folded region since both references disclose disposable absorbent articles with folded flaps yielding portions with varying thicknesses and hence varying basis weights. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the flaps and thus providing flaps with slits.

**Figure 2.**



Regarding claims 13-14, and 16 Fujioka/Mesek disclose the first and second slits as discussed above with respect to claim 12. Mesek further discloses the slits are

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substantially perpendicular to the longitudinal axis but also may extend in a diagonal non-linear fashion (column 7, lines 37-39 and figure 2). One would be motivated to modify the flaps of Fujioka with the non-linear angled slits of Mesek for enhanced folding in the folded region since both references disclose disposable absorbent articles with folded flaps yielding portions with varying thicknesses and hence varying basis weights. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the flaps and thus providing flaps with non-linear angled slits.

Regarding claims 22-24 Mesek further discloses the absorbent batt 14 of disposable diaper 10 with a densified paper-like skin containing a web interface with a quantity of superabsorbent material (col. 4, ll. 1-3, ll. 52-60). The web interface of the absorbent is capable of being air-formed since Mesek discloses an absorbent batt with the same structure and since the process of making the web is given little patentable weight. If a prior art structure is capable of performing the intended use as recited in the preamble, then it meets the claim. See, e.g., *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). One would be motivated to modify the article of Fujioka with the superabsorbent and pulp fibers of Mesek for enhanced absorbency since both references disclose disposable absorbent articles with folded flaps yielding portions with varying thicknesses and hence varying basis weights. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the article and thus providing superabsorbent particles and an air-formed article.



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7. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fujioka et al. (US 6,050,984; herein 'Fujioka') in view of Ortega et al. (US 2001/0055682; herein 'Ortega'). Fujioka *does not expressly disclose* basis weight values. **Ortega** discloses basis weight is a result effective variable since it is a result of density and thickness (paragraph 0003). Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the absorbent structure with the basis weight values, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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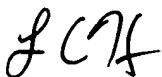
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (hours vary).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura C. Hill  
Examiner  
Art Unit 3761

LCH



**TATYANA ZALUKAEVA**  
**SUPERVISORY PRIMARY EXAMINER**





UNITED STATES DEPARTMENT OF COMMERCE

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APPLICATION NO/ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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10-721-829

EXAMINER
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DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents